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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

ADKINS et al. v. ADKINS et al.

June 10, 1915.

[85 S. E. 490.]

1. Tenancy in Common (§ 28*)—Exclusive Occupancy by Tenant in Common—Accountability to Cotenants.—A tenant in common occupying the premises to the exclusion of cotenants, acquiescing in the possession on the idea that the premises could safely be trusted to the management of the tenant in common, is accountable for receiving more than his just share.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 76-88; Dec. Dig. § 28.* 8 Va.-W. Va. Enc. Dig. 109; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

2. Tenancy in Common (§ 28*)—Exclusive Occupancy by Tenant in Common—Accountability to Cotenants.—A tenant in common occupying the premises to the exclusion of cotenants is chargeable, on settlement with the cotenants, with reasonable rent for his use and occupancy in the condition in which the premises were at the time he went into possession, and each year's rent bears interest from maturity; but he is not accountable for any of the profits, nor can he recover for any losses by reason of being a bad husbandman.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 76-88; Dec. Dig. § 28,* 8 Va.-W. Va. Enc. Dig. 109; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

3. Partition (§ 83*)—Issues—Statutory Provisions.—Code 1904, § 2562, authorizing the court in partition to take cognizance of all questions of law affecting the legal title, limits the jurisdiction to settlement of questions affecting the legal title to the premises sought to be partitioned, and controversies arising between the tenants growing out of their general indebtedness to each other and having no relation to the title can not be settled.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 228, 229; Dec. Dig. § 83.* 10 Va.-W. Va. Enc. Dig. 774; 14 Va.-W. Va. Enc. Dig. 810; 15 Va.-W. Va. Enc. Dig. 781.]

4. Partition (§ 81*)—Accountability of Tenant in Common for Waste.—Where, in partition, it appeared that a tenant in common had occupied the premises to the exclusion of cotenants, but there was no evidence that he had cut or sold any timber from the prem-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ises, but that a third person who had occupied the premises for a year had cut and sold some timber, but it did not appear that the tenant in common was responsible therefor, or that he received any proceeds from any sale, he was not chargeable with any timber cut.

[Ed. Note.—For other cases, see Partition, Cent. Dig. § 226; Dec. Dig. § 81.* 8 Va.-W. Va. Enc. Dig. 106; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

5. Partition (§ 101*)—Sales—Reservation of Rights.—Where an undivided interest in coal and mineral rights in land sought to be partitioned was reserved, the court ordering a sale for partition properly reserved the mineral rights owned by persons not parties.

[Ed. Note.—For other cases, see Partition, Dec. Dig. 101.* 10 Va.-W. Va. Enc. Dig. 774; 14 Va.-W. Va. Dig. 810; 15 Va.-W. Va. Enc. Dig. 781.]

Appeal from Circuit Court, Goochland County.

Suit for partition by Thomas Adkins against W. A. Adkins and others, in which Mary G. Adkins, on the death of defendant W. P. Adkins pending suit, filed answer and cross-bill. From a decree directing sale for partition and distribution of proceeds, defendants appeal. Reversed and remanded.

C. R. Sands and Garnett & Cabell, all of Richmond, for appellants.

S. S. Patteson, of Richmond, for appellees.

SHIELD et al. v. E. S. ADKINS & CO. et al.

June 10, 1915.

[85 S. E. 492.]

1. Trusts (§§ 17, 18*)—Express Trust—Creation.—An express trust in real estate can be created by parol agreement, and, such express declaration being enforceable, the rule forbidding the admission of parol evidence to contradict written instruments does not apply.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 15-24; Dec. Dig. § 17, 18.* 13 Va.-W. Va. Enc. Dig. 268; 14 Va.-W. Va. Enc. Dig. 1027; 15 Va.-W. Va. Enc. Dig. 1013.]

2. Trusts (§ 25)—Enforcement—Definiteness of Agreement.—A parol trust will not be enforced by a court of equity unless it is clear, definite, and unequivocal in its terms, and it appears that the minds of the parties have met; hence an alleged parol trust in land, arising out of a purchase by defendants under an agreement that plaintiff should share, will not be enforced where the terms on which plaintiff should share were not agreed upon.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 34-37; Dec.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.